IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4489 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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K H PATIDAR - Petitioner(s)

Versus

DY COLLECTOR & 3 - Respondent(s)

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Appearance :

UNSERVED-EXPIRED (N) for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 & 227 of the Constitution of India the petitioner has challenged

the legality and validity of the judgment and order dated 23.05.1990 passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat passed in Revision Application No. SRB 1 of 90 in dismissing the same and confirming the order passed by the Deputy Collector, Dahod dated 12.05.1986 passed under Section 9 of the Bombay Prevention of Fragmentation Act (hereinafter referred to as “the Act” for short) declaring the sale in favour of the petitioner in breach of Section 9(1) of the Act and directing the petitioner to vacate from the land in question.

2. The land bearing Revenue Survey No. 211/2/1 admeasuring Acres 1-32 gunthas situated at Village Nansalai, Taluka Jalod was owned by one Bai Kasni daughter of Fatahpura Damor and the said land came to be purchased by the petitioner vide Registered Sale Deed dated 29.06.1973 and it is the case of the petitioner that prior thereto the said land was mortgaged with the petitioner and the petitioner was in possession of the land since 1970. The Deputy Collector, Dahod was of the opinion that the sale transaction in favour of the petitioner is in breach

of Section 7 of the Act, proceedings came to be initiated vide issuing show cause notice on 12.02.1984 and the petitioner was called upon to sh ow cause as to why the sale transaction should not be declared in breach of the Act and the petitioner should not be removed from the land in question. The Deputy Collector, Dahod by its order dated 12.05.1986 declared the sale transaction in favour of the petitioner as illegal and in breach of the Act while exercising the powers under Section 9 of the Act and also further passed order under Section 9(3) of the Act directing the petitioner to vacate from the land in question. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dahod dated 12.05.1986 passed in Fragmentation Case No. 3 of 1986, petitioner preferred Revision Application before Addl. Chief Secretary Appeals, (Revenue Department) State of Gujarat being Revision Application SRD 1 of 1990 and Deputy Secretary, Revenue Department Appeals State of Gujarat by its judgment and order dated 23.05.1990 dismissed the said Revision Application confirming the order passed by the Deputy Collector, Dahod dated 12.05.1986.

Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Secretary, Revenue Department Appeals, State of Gujarat dated 23.05.1990 passed in Revision Application SRD 1 of 1990, the petitioner has preferred the present Special Civil Application under Articles 226 & 227 of the Constitution of India.

3. Though served, nobody appears on behalf of the petitioners. Under the circumstances, this Court has decided the present Special Civil Application as the matter is of the year 1990.

4. It appears from the pleadings that the main contention on behalf of the petitioners is that initiation of proceedings by Deputy Collector, Dahod was after unreasonable period i.e. After period of almost 11 years of the sale transaction and even 14 years after mortgage as the petitioner is in possession in the y ear 1970. It is further submitted that the proceedings could not have been initiated by the Deputy Collector, Dahod after unreasonable period and therefore it is requested to allow the present

Special Civil Application.

5. It appears from the pleadings that even there is no fragment as the land in question is an irrigated land and as per Government policy and Circular, there is no breach of fragmentation Act if there is irrigated land.

6. Shri M.R. Mengdey learned A.G.P for the respondents State authority has tried to support the judgment and order passed by both the authorities below by submitting that as the sale transaction in favour of the petitioners was in breach of provisions of the Fragmentation Act, the same is rightly set aside by the Deputy Collector Dahod and confirmed by Secretary Appeals and therefore, it is requested to dismiss the present Special Civil Application.

7. As seen from the record, sale deed in favour of the petitioner is dated 29.06.1973 and a show cause notice came to be issued for the first time by the Deputy Collector in the y ear 1984 i.e after a period of 11 years. As held by the Division Bench of this

Court in case of Valjibhai Jagjivanbhai v. State of Gujarat reported in 2005 (2) G.L.H. 34, the powers under Section 9(2) and 9(3) of the Act are required to be exercised within reasonable time especially as the authority has considerable opportunity to know about transaction. The said judgment is relying upon the decisions of the Hon'ble Supreme Court in the case of Mohamad Kavi Mohmad Amin V. Fatmabai Ibrahim, (1997) 6 SCC 71 in which the Hon'ble Supreme court also referred to the decisions rendered in case of State of Gujarat v. Jethmal Bhagwandas Shah and State of Gujarat v. Patel Raghav Natha held that the powers are to be exercised within reasonable time and if the powers are exercised after unreasonable period and/or at belated stage, the same is not permissible. In view of the above, exercise of powers by Deputy Collector, Dahod in the present case certainly can be said to be at belated stage and after unreasonable period which was not permissible and the same could not have been confirmed Secretary Appeals.

8. For the reason stated above, the petition succeeds. The judgment and order passed by the Deputy

Secretary Appeals State of Guajarat dated 23.5.90 passed in Revision Application No.SRD-1 of 1990 as well as the order passed by the Deputy Collector Dahod dated 12.05.1986 passed in Fragmentation case No. 3 of 1986 are hereby quashed and set aside.

9. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH, J.)

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